IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 350 OF 2001

IN

SUIT NO. 442 OF 2001

Smt/ Amina Khatoon wd/o. Yasin,
Mohammed Nanhe .....**Plffs.**
vs.
Abdul Hakim Mohammed Yasin
Nanhe and ors. .....**Defnds.**

Ms. Mamta Saadh i/b. T.N. Tripathi for the plffs.

Mr. Dhakephalkar a/w. A.M. Rajabhally for defendan tno.1.

Mr. Shailesh Shah a/w. K.L. Kharva for defendant no.2 to 4.

CORAM: S.U. KAMDAR, J.

DATE : 29th September, 2005.

P.C. :.

1. The present suit is filed by the mother in a suit purpotedly enforcement of family arrangement between the parties. It is the case of the plaintiff mother that the defendant no.1 to 4 and defendant no.5 to 8 are in possession of only two

shop premises which has been left behind by the deceased father. It is further contended that inrespect of the mazgaon shop premises the defendant nos.1 to 4 were in occupation and were to run the shop rotationaly for one year each. On the other hand the case of the defendant no.1 is that he was running the business alongwith his father right from the time when he was alive. It is his case that the premises are tenanted premises and since he was running the business form the said premises alongwith his father. Both the premises have come to him by way of tenancy u.s. 5(11)(c).

2. It is further the case of the defendant no.1 that he has been in actual use, occupation and possession of the premises throughout from the year 1988 till today and he has never vacated the possession thereof and therefore the question of rotating of the premises is a story which has been put forward by the plaintiff and put forward by the defendant nos.2, 3 and 4 and is totally bogus and without any merits. It has been further contended

by the learned counsel for the defendant no.1 that the deceased did not leave only two shops premises but infact left around 12 shop premises and the plaintiff has admitted the fact that the said 12 shop premises has been left behind. Learned counsel for the defendant nos.2, 3 and 4 has vehemently contended that the court Receiver should be appointed as Receiver inrespect of the said premises and he has thus contended that he has also taken out Notice of Motion being 1264 of 2001 for the said relief. However the plaintiff who has filed the suit and who is the mother is satisfied with the ad-interim orders passed by the learned single judge being the order dated 13.2.2001 thereof the statement of the defendant no1. to maintain the account and that he will not alienate, encumber or create any third party tights inrespect of the said premises. Learned counsel appearing for the defendant no.1 states that he is willing to continue with the said statement as recorded by an order dated 13.2.2001. However the payment of Rs.4,000/- per month which has been directed by this court as by ay of ad-interim arrangement was

to continue till the plaintiff was abroad or till further order of this court. It is the case of the defendant no.1 that immediately after the orders the plaintiff had left abroad and thus no amount has been due and payable. However I am of the opinion that the defendant no.1 shall continue to pay Rs.4000/- per month but only during the period when the plaintiff is residing in Mumbai and not otherwise. Learned counsel for the defendant no.2 also accepts the ad-interim order which has been passed in Notice of Motion No,. 1264 of 2001 under which he is directed to maintain the account.

3. In so far as the prayer of the defendant no.2,3 and 4 are concerned of the appointment of court Receiver on the purported ground of family arraignment cannot be accepted for the simple reason that the defendant nos.2 and 4 having failed to produce any document to show that he was in possession of the said premises. If that is so then the case put forward by the defendant no.1, I am not inclined to pass an order for appointment of the

court Receiver.

4. In view thereof I pass the following order.

(i) Notice of Motion no. 1264 of 2001 both are made absolute to the extent that the statement of the defendant no.1 as recorded in the order dated 13.2.2001 is accepted subject to that the payment of Rs.4000/- will be payable only when the plaintiff will be residing in Mumbai.

(ii) In so far as Notice of Motion no . 1264 of 2001 is concerned the ad-interim order is confirmed. Leaned cousinly for the plaintiff undertakes to inform the defendant no.1 as and when the defendant no.1 is in Mumbai and period for which she is staying in Mumbai.

sd/-

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